

Business Taxpayers' **BILL OF RIGHTS**

1998-99 ANNUAL REPORT

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Stockton
Second District

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Executive Director

 **STATE BOARD OF EQUALIZATION**

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Letter to Executive Director

October 1999

Mr. E. L. Sorensen, Jr.
Executive Director

Dear Mr. Sorensen:

The Taxpayers' Rights Advocate's Office staff and I are pleased to present the 1998-99 Business Taxes Bill of Rights Annual Report for the Board's and your consideration.

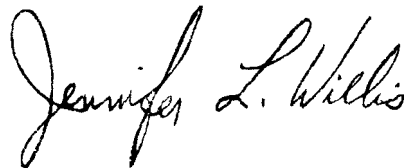
As the effort continues to improve customer service in both Federal and State Government, we, at the Taxpayers' Rights Advocate's Office, strive to identify and pursue solutions to recurring problems within the agency. We accomplish this by working not only with historical data, but by also proactively seeking methods to do business better with customer service our utmost priority.

Problem resolution continues to be a primary focus of the Taxpayers' Rights Advocate's Office. Since 1990, the number of new business contacts has grown at a steady rate. It is speculated that the recent growth has been attributed to an increased public awareness of their rights and the existence of our office. We accomplished this by ensuring that all board publications include our address and toll-free telephone number. We are also making our presence known by participating in Taxpayer Service Day seminars throughout the state of California.

This report highlights our accomplishments over the past year, current issues in the process of solution development, and emerging issues we recommend for consideration in the coming year.

We look forward to continuing to work with staff and the public as we identify and resolve problems to better serve our customers.

Respectfully submitted,

A handwritten signature in black ink that reads "Jennifer L. Willis". The signature is written in a cursive, flowing style.

Jennifer L. Willis
Taxpayers' Rights Advocate



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Taxpayers' Rights Advocate Office Background

In January 1989, the original Taxpayers' Bill of Rights was established to ensure that the rights, privacy, and property of California taxpayers are adequately protected in the assessment and collection of sales and use taxes. Currently, approximately 970,000 taxpayers are provided protection under this law. Effective January 1993, the Special Taxes Bill of Rights was established, expanding Bill of Rights statutory authority to the special taxes programs administered by the Board of Equalization (BOE), currently impacting approximately 150,000 tax and fee payers. As the board accepts responsibility for new special taxes and fee programs, the Bill of Rights protections are added for each program. Since these programs primarily impact business owners, they will be referred to generally as the Business Taxpayers' Bill of Rights, covering both sales and use taxes and the various special taxes and fees.

The Property Taxpayers' Bill of Rights went into effect January 1, 1994. It governs the assessment, audit, and collection of property taxes and ensures that taxpayers receive fair and uniform treatment under the property taxation laws. Statewide, there were approximately 12 million units on the local property tax rolls last year.

The Taxpayers' Rights Advocate's (TRA) Office facilitates resolution of taxpayer complaints or problems; monitors various board tax and fee programs and all 58 county property tax programs for compliance with the Taxpayers' Bills of Rights; recommends new procedures or revisions to existing policy to ensure fair and equitable treatment of taxpayers; and participates on various task forces, committees and public forums. During the year, mandated Taxpayer Bill of Rights public hearings are held to provide an opportunity for the elected Board Members to hear suggestions and comments from the public.

The TRA Office generally assists taxpayers who have been unable to resolve a matter through normal channels, when they want information regarding procedures relating to a particular set of circumstances, or when there are apparent rights violations in either the audit or compliance areas. Taxpayers also call just wanting to vent their frustration or needing assurance or confirmation that staff action is lawful and just. In cases where the law, policy, or procedure does not allow any change to the staff action, but a change appears justified, the TRA Office is alerted to a potential area that may need clarification or modification. Several of the past suggestions for *Taxpayer Information Bulletin* articles, recommendations for policy or procedural changes, and legislative proposals have resulted from these types of contacts with taxpayers.

The TRA Office provides assistance to taxpayers and board staff to facilitate better communication between both parties and eliminate potential misunderstandings. Taxpayers are provided information on policies and procedures so that they can be better prepared to discuss their issues with staff and effect resolution.



Accomplishments

The primary function of the TRA Office is to ensure fair and equitable treatment of taxpayers in the assessment and collection of taxes, and to identify changes in policies, procedures and statutes to improve and/or ease taxpayer compliance. As a result of specific contacts from taxpayers, issues raised at the annual Taxpayers' Bill of Rights hearings, and issues identified by the TRA Office, suggestions are presented to the program staff for evaluation. With the cooperation of board staff, the following are changes that were accomplished this past year.

- **Annotations** – As a direct result of concerns expressed in a Taxpayer Bill of Rights (TBOR) Hearing, an operations memo was released to board staff explaining the proper use of annotations. Annotation Additions and Deletions Indices are also being developed and will be maintained in the Business and Property Taxes Law Guides. Every annotation published will now include the date of legal ruling of counsel. The publication edition date and publication edition date of any amendment will also appear at the end of the annotation. Any person may request, and shall be entitled to receive, a copy of a legal ruling of counsel that has been annotated (with confidential information excised). Requests may be directed to the board's legal division.
- **Correspondence Acknowledgment** – To address the issue raised by some taxpayers during the 1998 TBOR hearings that staff failed to timely respond to written taxpayer correspondence, the Board directed staff to develop an agency-wide policy to timely acknowledge correspondence received from taxpayers and the public. The policy is being incorporated into the Board of Equalization Administrative Manual and states that all correspondence will either be acknowledged or responded to within 12 working days of receipt.
- **Receipt for Books and Records of Account** – In a case presented to the Taxpayers' Rights Advocate, a taxpayer stated that he was not properly notified of a liability because the billing document was mailed to his old address. He stated that during the audit, he signed a Receipt for Books and Records that listed his new mailing address, but the new address was never changed in the board's records. As a result of his concern, Form BOE 945, Receipt for Books and Records of Account, has been revised to include the question, "Is the mailing address listed above a change to your official mailing address of record?" If the "yes" box is checked, the address information is forwarded to the account maintenance staff to change the address on the registration system. The auditor must verify that the registration has been updated prior to submitting the completed audit for review. The new address is also indicated on the audit report.
- **Appeals Correspondence** – In a recent TBOR hearing, a taxpayer stated that during the appeals process, the board correspondence did not provide sufficient information as to the status of the appeal. As a result of this taxpayer's concern, board staff reviewed all correspondence in the appeals process and identified specific letters in which the following paragraphs were added:



Because interest charges continue to accrue each month on any unpaid portion of tax, you should consider paying the full liability, or at least the undisputed portion, as soon as possible. Generally, if you are successful in your appeal, you will receive a refund of any overpaid tax with interest.

The current interest rate for underpayment of tax is 0.8333% per month or portion of a month (10% annual). The current interest rate for overpayment of tax is 0.333% per month or portion of a month (4% annual). Historically, the annual interest rate for underpayments has varied from 10% to 14%, while the rate for overpayments has varied from 3% to 6%.

Although the majority of appeals are decided in less than a year from the date the appeals are first acknowledged, some cases may take longer. Any time during the appeals process you may call our Information Center at 1-800-400-7115 to check on the amount of interest that has accumulated to date or the status of your appeal. Customer Service Representatives are available from 8:00 a.m. to 5:00 p.m., Monday - Friday, excluding holidays.

The addition of this information will assist taxpayers in making educated, informed decisions relating to their liability with the board during the appeals process.

- ***Return of Audit Work Papers*** – Under Regulation 1705, Relief From Liability, information contained in an audit report is considered written advice from the board. If a taxpayer reasonably relies on this information, and it is subsequently determined to be incorrect, the taxpayer may be relieved of tax, interest and penalty that would otherwise be due. It was suggested at a TBOR hearing that when the board purges their files of old materials, the taxpayer should have the option of receiving any prior audit reports and audit work papers which are no longer necessary to retain in a taxpayer's file.

As a result of this suggestion, district offices have been directed to retain any audit reports or work papers until guidelines have been established to return the workpapers back to the taxpayer. Guidelines are currently being developed to handle the disposition of these reports/workpapers, either by returning them to the taxpayer or destroying them at the taxpayer's request.

- ***Electronic Funds Transfer (EFT) Prepayment Legislation:*** Board-sponsored Senate Bill 1302 incorporated TRA's suggestion to correct and clarify the inequity attributable to the penalties imposed on prepayments by specifying that EFT taxpayers can only be assessed a maximum six percent penalty – just as traditional filers are assessed when they make late prepayments.



Current Issues

The following issues, identified during last year's hearing and throughout this year, are in the process of being reviewed with program management to develop solutions.

- **Taxpayer Bill of Rights III** – In a continuing effort to provide enhanced customer service, and to conform to federal and other state agencies in the area of customer relations, the Legislative Division and TRA Office performed a detailed analysis of the provisions of the 1998 Internal Revenue Service Restructuring and Reform Act.

Two provisions introduced into legislation under Assembly Bill (AB) 1638 have been enrolled: Suspension of the statute of limitations on filing refund claims during periods of physical or mental disability; and the requirement to provide an annual statement to every taxpayer that has entered into an installment agreement with the board, indicating the amount of the tax liability, the amount paid during the year, and the remaining amount of the liability. Remaining provisions not incorporated will be proposed in next year's legislative session. AB 1638 also contains provisions to bring special taxes and fee programs into conformance with the changes made to the sales and use tax laws in Fiscal Year 1997-98 under the Taxpayer Bill of Rights II.

In addition, the TRA staff and program management identified fifteen sections of the IRS Restructuring and Reform Act that are being developed for administrative conformity within the Board of Equalization. These provisions are:

1. Basis for Evaluation of Board Employees – Explore a taxpayer survey for the collections process;
2. Burden of Proof – Expand audit manual descriptions of board staff vs. taxpayer burden of proof;
3. Suspension of Interest for Unreasonable Error or Delay by BOE employee – Develop guidelines to define unreasonable error or delay;
4. Procedural Requirements for Imposition of Penalties – State penalty code section in bill notes;
5. Notice of Interest Charges – State interest code section in bill notes;
6. Due Process in BOE Collection Actions – Include notice of collection actions in addition to notice of lien on bill notes;
7. Motion to Quash Third Party Summons – Expand language from financial institutions to accountants and attorneys;
8. Notice of BOE Contact of Third Parties – Include provisions in collections process pamphlet;
9. Guaranteed Availability of Installment Agreements – Explore application to audit liabilities;



10. Explanation of Joint and Several Liability – Include information in the new Collections publication;
 11. Disclosure of Criteria for Examination Selection – Include general statement in the Audits publication and Your Seller's Permit publication;
 12. Explanations of Appeals and Collection Process – Incorporate into collections publication;
 13. Disclosure to Taxpayers – Include general statement in Your Seller's Permit publication of conditions under which tax return information may be disclosed;
 14. Disclosure of Public Records – Establish procedures and guidelines to access public regulations to maximize public accessibility to the board's public records;
 15. Identification of Return Preparers – Change tax form to exclude request for tax preparer social security number.
- ***Audit and Appeals Correspondence*** – As part of the Audits and Appeals Customer Service Group, the TRA Office raised an issue that taxpayers do not clearly understand the deadlines presented in correspondence sent during the audit and appeals process, and taxpayers are not adequately informed of the consequences of failing to take timely action. There have been several cases where a taxpayer has contacted the TRA Office for assistance only to find out they have missed the deadline to file an appeal. The Audits and Appeals Customer Service Group is currently compiling all correspondence, from initial contact for an audit appointment to correspondence sent at the conclusion of a hearing before the Board, to review for clarity, plain language, and appropriate comments on the consequences of failing to act timely. This customer services group is also looking at the flow of the documents as a whole to ensure that sufficient notification is provided for each step in the process, and that each notification follows a logical order.
 - ***Taxpayer Notification of Reasons for Assessing Fraud Penalty*** – When an account is audited, there are certain guidelines that must be followed when recommending the assessment of a 25% fraud penalty. Key to this process is the preparation of a memo to the district administrator outlining the specific reasons that a fraud penalty is being recommended. It has come to the attention of the TRA Office that not all districts view the memo to the district administrator as part of the audit working papers that are provided to the taxpayer. The TRA Office has identified this inconsistency and will work with staff in the coming year to create a policy and guidelines in the Field Audit Manual to provide this information to the taxpayer.
 - ***Commitment to a Discrimination/Harassment-Free Taxpayer Environment*** – When a customer alleges discrimination or harassment, the TRA Office works with the Equal Employment Opportunity Office and program managers to resolve the complaint. Working together with program management, these two offices support the BOE commitment to a discrimination/harassment-free taxpayer environment by investigating complaints and ensuring that BOE staff are properly trained in these areas.



Emerging Issues

As a result of taxpayer contacts and review of trends, policies and procedures within the board, the Taxpayers' Rights Advocate Office recommends consideration of the following issues:

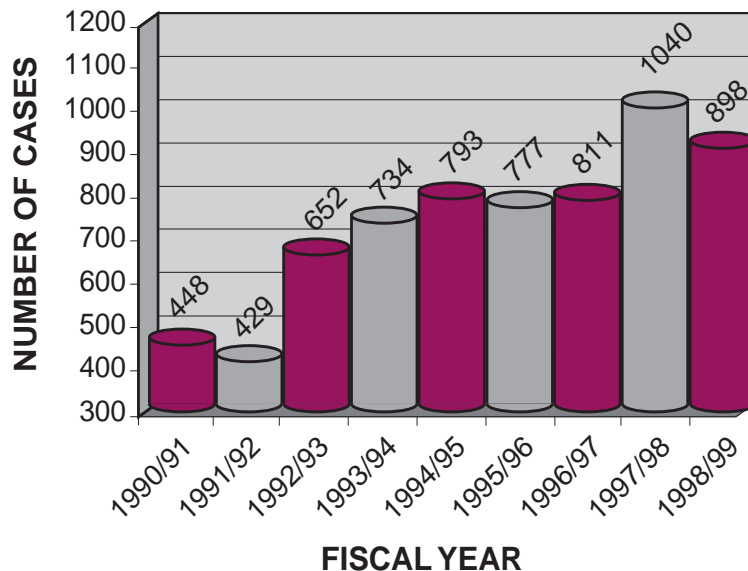
- **Security** – The TRA Office is looking into the need for security or alternatively increasing the minimum security requirements from \$500 to \$1,000, which would parallel the minimum requirements under the lien program.
- **Late Filing Penalties** – Several cases have been presented to the TRA Office on late filing penalties where the taxpayer insists that the document was placed in the mail timely. Under current procedures, due to storage space issues the postmarked envelope is destroyed once the “mail date” has been input on the system. Therefore, the BOE does not have physical proof of the mail date. Even if the mail is sent certified, the certified receipt is generally not accepted unless the specific document is identified on the receipt. Taxpayers have complained that the BOE destroys the only evidence of timely mailing, preventing the taxpayer from proving their case. The TRA Office would like to explore alternatives, such as scanning the envelopes on late returns, to support the postmark date with some sort of physical evidence.
- **Account Activities and Staff Communication** – Over the past several years, there has been a trend within the board to centralize common functions in the agency from handling in the district offices to Sacramento headquarters offices. Although this has increased efficiency and consistency in handling accounts, it also has created a greater need for communication between the district offices and headquarters. The TRA Office has been involved in several cases where the district office has acted without knowledge of activities occurring in Headquarters on the same issue, and vice versa. The TRA Office would like to explore the communications systems currently in place to ensure that the district offices and headquarters divisions are adequately informed of account activities.
- **Revocation Notices** – The TRA Office would like to examine the current procedure of sending revocation notices three weeks after the due date of a return. This office feels that it is unnecessary to take such punitive action as the first contact on a late return.
- **Reinstatement Fees** – Currently, when an account is reinstated from a revoked status, the taxpayer is charged a \$50 fee for each location on the permit. This holds true even for locations that are closed during the period of revocation and have no intention of reopening. The TRA Office would like to explore the reasoning behind this fee and why it is assessed as a reinstatement fee for locations that are not being reinstated due to closure.
- **Levy Notification** – When a levy is sent to a financial institution, the taxpayer is notified of the levy by mail several days after the original levy is sent to the bank. The TRA Office is reviewing the law and procedures to ensure the taxpayer is given sufficient notification that a levy has been issued.



Taxpayer Contacts with TRA Office

Historical Caseload

During fiscal year 1998/99, the TRA Office handled 898 new Business Taxes contacts. As the following chart indicates, Business Taxes contacts have shown a relatively consistent growth pattern in the past nine years. Although the TRA Office does not have specific data on the cause for this increase, it is presumed that it is in direct relationship to the increased public awareness of taxpayer rights and the existence of the TRA Office.



In recent years, the IRS has increased the public awareness of alternatives that are available if rights are being violated through legislation and public hearings. The TRA Office expects to continue to see an increase in taxpayer contacts as access to the TRA Office becomes more readily available through the Internet, our toll-free telephone number, and our participation in taxpayer and practitioner seminars and forums.

Appendices 1 and 2 provide a breakdown of contacts by district and headquarters offices. Cases were assigned to a specific district or headquarters office if the taxpayer contacted the TRA Office due to a specific action taken by that office. Taxpayers who wanted information and guidance regarding a board process or procedure were assigned to the TRA Office as the office of origin. When reviewing these appendices, it should be noted that there are many contributing factors that may cause certain districts to reflect a higher number of cases than other districts. These factors may include the number of taxpayers within the district, the type and size of business operations, geographical proximity to Sacramento, and local policy regarding referrals to the TRA Office.

Contacts from taxpayers with consumer use tax issues have always been high, but are generally not the direct result of inappropriate action by the Consumer Use Tax Section. These cases relate to the purchase of vehicles, vessels, and aircraft and usually involve taxpayers who are having difficulty documenting their position due to the time between the purchase of their vehicles, vessels, or aircraft and board contact (up to eight years).

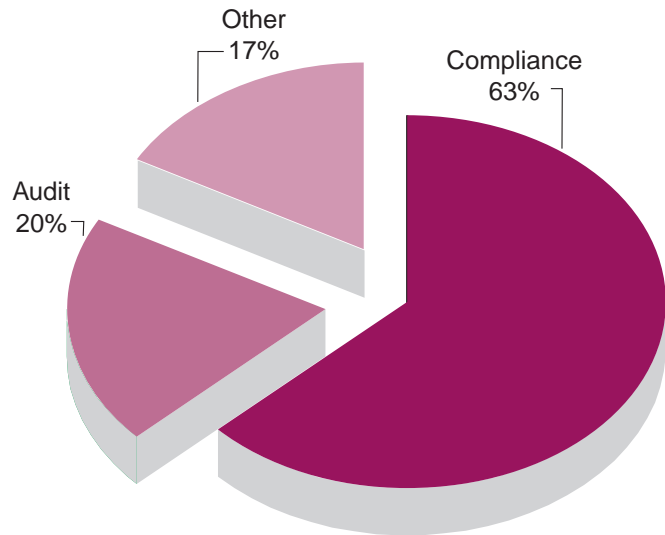


Taxpayer Inquiries Cover a Wide Range of Issues

Of the cases received, 63% involved sales tax compliance related issues, 20% involved sales tax audit related issues and 17% involved other issues, such as consumer use tax, special tax and FTB appeal matters.

In addition, during the 1998/99 fiscal year, we tracked the reasons that taxpayers contacted our office. In some cases, there were multiple reasons; therefore, we allowed for up to three reasons per contact in our statistics.

The most common reasons why taxpayers contacted our office were to obtain information and guidance on a particular process, or to determine if an action taken by the board staff was appropriate and in compliance with law and procedures. The remaining issues in descending order were: Liens, TRA Intervention Requested, Payment Plans, Questioning Liability, Refund, Levy/EWO, Penalty, Policy/Procedure, Interest, Security, Legal Issues, Revocation, Returns, Ownership, Late Protest, Consumer Concern, and Bankruptcy.



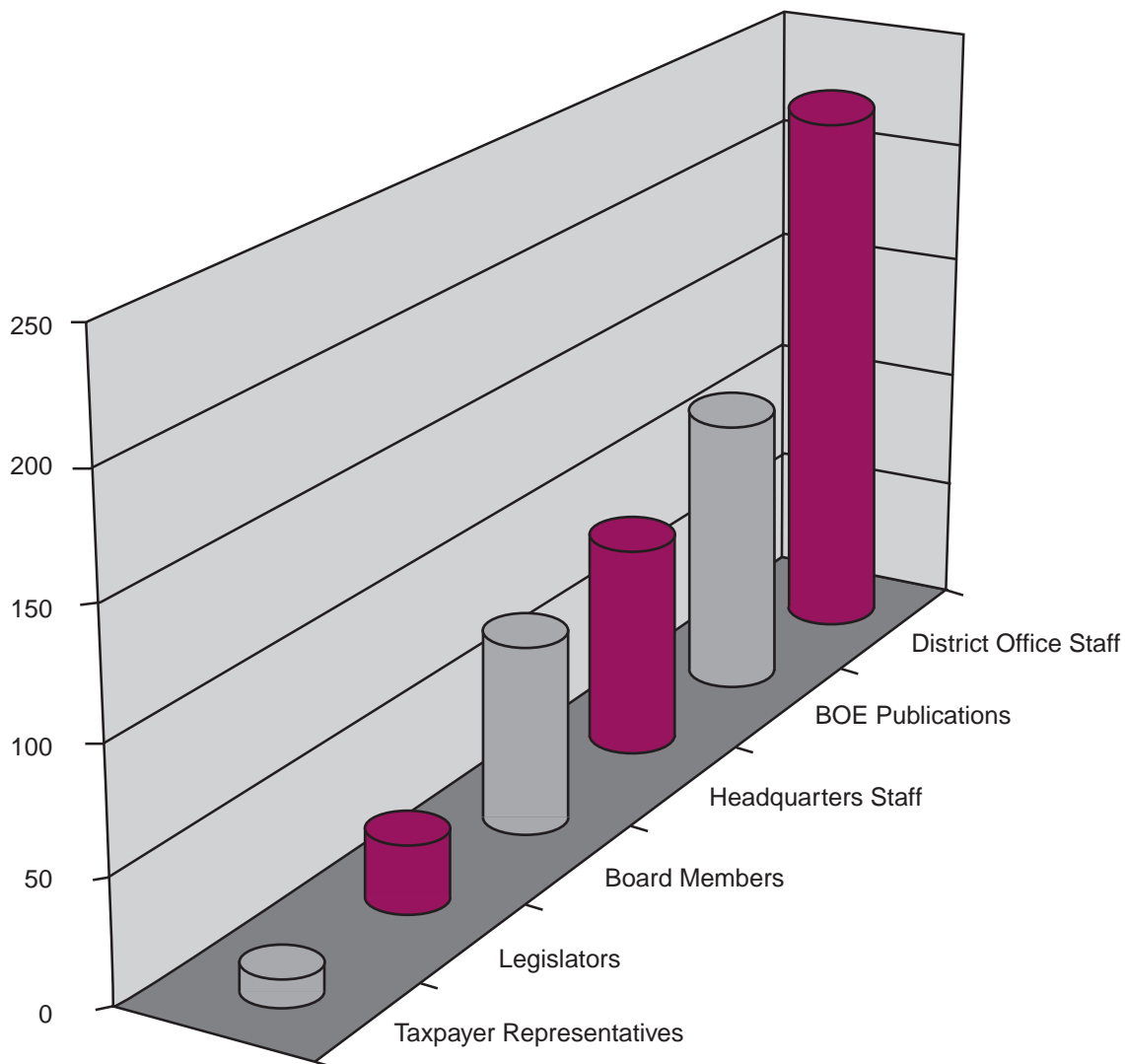
Customer service issues are segregated into three broad categories: staff courtesy, board timeliness, and communication problems. Less than ten percent of the complaints had customer service issues. The statistics were captured solely based on the taxpayers' statements or impression of the situation; therefore, these statistics are not necessarily verified problems but reflect the taxpayers' perceptions of the situation. For example, if a taxpayer complained that a collector made rude comments, we would record a "staff courtesy" complaint. However, often times the taxpayer's contentions did not match staff's recollection of the situation or were portrayed in a different light or perspective.

Communication issues such as misinformation, refusal to allow the taxpayer to talk to a supervisor, failure to answer specific taxpayer questions, or not receiving a communication or notice, decreased dramatically from 36% in fiscal year 97-98 to only 5% this fiscal year. Four percent (4%) of the cases had a complaint about board timeliness in responding to inquiries, issuing refunds or resolving the taxpayer's case; and less than one percent (1%) had complaints about staff courtesy. In all three categories there was a significant decrease from the previous year. The TRA Office feels that this reflects positively on the board's efforts to become more customer oriented and responsive to the needs of the public, and to provide clear, timely, and courteous treatment to the taxpayer.



How Taxpayers Were Referred to the Advocate's Office

In an effort to improve our service to the public, our office attempts to identify the source of referrals. Of those accounts that identified a referral source, the majority continue to be referred by board staff or board publications. The following chart gives a breakdown of how taxpayers were referred to our office based on those accounts that identified a referral source. There were approximately 400 accounts that either did not identify the referral source, or identified a source that was not tracked by the TRA Office. These included referrals by friends, family, and most recently the Internet.



Taxpayers' Rights Advocate Office Case Summary

(FY 1998/99)

District and Headquarter Offices	Cases by Issue Type			Total Cases	Confirmed Staff Case Handling		Case handling Changed		Satisfied with TRA		Referred To		
	Audit	Comp.	Other		Yes	No	Yes	No	Yes	No	District	HQ	Other
Norwalk (AA)	6	18	0	24	11	1	2	6	14	1	10	1	1
Torrance (AB)	2	14	0	16	3	6	3	6	11	1	9	2	0
Van Nuys (AC)	12	19	0	31	14	1	6	13	19	0	16	2	1
Industry (AP)	10	20	0	30	13	5	6	10	11	4	13	2	0
Ventura (AR)	5	29	1	35	11	6	11	8	19	2	10	4	2
Culver City (AS)	5	13	0	18	6	0	2	5	10	1	8	4	1
San Francisco (BH)	1	20	1	22	9	2	4	6	13	1	8	0	0
Oakland (CH)	4	24	0	28	9	5	6	8	20	0	14	5	0
Fresno (DH)	6	24	1	31	11	1	5	11	17	2	10	3	2
Santa Ana (EA)	6	40	1	47	25	5	8	20	22	6	15	5	1
Riverside (EH)	5	13	0	18	7	2	5	3	12	0	7	2	0
San Diego (FH)	2	29	0	31	9	5	5	9	19	1	12	3	0
San Jose (GH)	8	23	0	31	13	6	11	11	24	0	15	3	0
Santa Rosa (JH)	5	22	1	28	10	2	5	8	13	2	10	3	0
Sacramento (KH)	7	37	1	45	17	6	15	10	31	3	24	4	0
Out-of-State (OH)	9	8	1	18	6	2	3	6	9	2	5	0	1
Appeals Section	18	4	3	25	9	1	2	8	13	1	1	6	1
Board Member's Office	1	3	0	4	0	0	0	0	2	0	0	0	2
Centralized Collection	2	6	15	23	10	2	4	9	9	3	0	14	0
Consumer Use Tax	1	3	12	16	6	1	2	4	3	3	0	7	0
HQ - General	6	6	7	19	8	2	3	4	9	1	1	7	0
Petition Section	10	3	1	14	4	1	1	3	8	1	1	2	1
Refund Section	8	18	4	30	6	4	9	5	17	2	1	11	0
Return Analysis	0	30	0	30	16	2	7	13	19	4	2	22	1
Special Procedures	0	28	2	30	8	2	5	7	17	3	0	12	0
Special Taxes	3	2	30	35	1	1	1	2	2	0	0	4	0
State Controller's Office	1	1	0	2	0	0	1	0	1	0	1	0	0
Taxpayer's Rights Adv.	41	102	74	217	34	3	9	24	125	4	17	37	9
Total	184	559	155	898	276	74	141	219	489	48	210	165	23

Note: The columns "Confirmed Staff Case Handling," "Case Handling Changed," "Satisfied with TRA" and "Referred To" will not always equal the total cases since they are not applicable in all cases.





APPENDIX 2

Taxpayer Contacts By Business Taxes Office

